

FILED

OA 91 Criminal Complaint

~~MAR 24 2008~~**United States District Court**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINT

GILBERTO HERNANDEZ-CARDENAS
AKA: Juan Manuel DonatoCase Number: **3 08 70163****JCS**

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about March 14, 2008 in San Francisco County, in the Northern District of California (Date) defendant(s) did,

(Track Statutory Language of Offense)

SEE ATTACHMENT "A"

in violation of Title 8 United States Code, Section(s) 1326

I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:
Official Title

SEE ATTACHED AFFIDAVIT MADE A PART HEREOF

PENALTIES: Imprisonment for not more than twenty (20) years and/or a fine of not more than two-hundred fifty thousand (\$250,000.00) dollars, a one-hundred (\$100.00) dollar special assessment, and three (3) years supervised release.

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ NoApproved
As To
Form:

AUSA

Name/Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

3/24/08

at

San Francisco, California

City and State

HONORABLE JOSEPH C. SPERO

U.S. MAGISTRATE JUDGE

Name & Title of Judicial Officer

Signature of Judicial Officer

ATTACHMENT "A"

On or about March 14, 2008, the defendant, Gilberto Hernandez-Cardenas (AKA: Juan Manuel Donato), an alien having been previously deported from the United States, was found in San Francisco County, in the State and Northern District of California, without having obtained express consent for reapplication for admission from either the Attorney General of the United States or his successor, the Secretary for Homeland Security (Title 6, United States Code, Sections 202(3), (4) and 557).

STATE AND NORTHERN DISTRICT OF CALIFORNIA)
) ss, AFFIDAVIT
CITY AND COUNTY OF SAN FRANCISCO)

The undersigned, being duly sworn, do hereby state:

I. INTRODUCTION

1. My name is Polly E. Kaiser, and I have been a Deportation Officer with the U. S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), formerly the United States Department of Justice (DOJ), Immigration and Naturalization Service (INS), for approximately five years. I am currently assigned under the Field Office Director, San Francisco, California (FOD/SF) in the Detention and Removal Operations (DRO) division. I am presently attached to the Prosecutions Unit of the Criminal Alien Program, a group that is responsible for enforcing federal criminal statutes involving criminal aliens who reenter the United States illegally.

2. As set forth below, I believe that probable cause exists to support a complaint against Gilberto Hernandez-Cardenas for a violation of Title 8, United States Code § 1326. The facts set forth in this Affidavit are based on my review of the official Immigration Service file (A79 620 208) of Gilberto Hernandez-Cardenas, my personal observations, my training and experience, and where noted, information related to me by other law enforcement officials. However, the facts set forth in this Affidavit are not all facts related to Gilberto Hernandez-Cardenas that are known to me.

II. STATEMENT OF PROBABLE CAUSE

3. Gilberto Hernandez-Cardenas is a 35 year-old male who is a native and citizen of Mexico, who last entered the United States illegally by crossing the international border with Mexico on or about October 2005 via Calexico, California, and knowingly remained in the United States without first having obtained the consent to reapply for admission from the Attorney General of the United States or the United States Secretary of Homeland Security.

4. The official Immigration Service file for Gilberto Hernandez-Cardenas contains three (3) executed Warrants of Removal and one Departure Verification. The most recent record of removal, the Departure Verification indicates that Gilberto Hernandez-Cardenas was last removed from the United States to Mexico at Calexico, California, on September 17, 2005. The Warrants of Removal show that Gilberto Hernandez-Cardenas was removed from the United States to Mexico at Nogales, Arizona on September 13, 2005, through San Luis, Arizona on June 10, 2003, and through Calexico, California on June 6, 2003.

5. On March 14, 2008, Immigration and Customs Enforcement Officers encountered Gilberto Hernandez-Cardenas when he was released from Marin County Jail to Immigration and

Customs Enforcement custody. On the same date, Immigration Enforcement Agent Mark St. John interviewed Gilberto Hernandez-Cardenas at the Bureau of Immigration and Customs Enforcement District Office, in San Francisco, California. After he was advised of his Miranda rights and the right to speak with the consular or diplomatic officers of his country of citizenship, Gilberto Hernandez-Cardenas waived his rights and provided a sworn statement in which he admitted that he was a citizen of Mexico and that he had been previously deported. Gilberto Hernandez-Cardenas also admitted that he had returned to the United States without having first obtained permission to re-enter from either the Secretary of the Department of Homeland Security or the Attorney General of the Department of Justice.

6. On March 19, 2008, AFIS (the Automated Fingerprint Identification System) confirmed that the fingerprints from Gilberto Hernandez-Cardenas' fingerprint card taken on March 18, 2008 are identical with prints on file with the Federal Bureau of Investigations (FBI) for FBI number 925639CB6. The same prints were a match to the fingerprint appearing on the September 17, 2005 Departure Verification and the June 6, 2003 Warrant of Removal for Gilberto Hernandez-Cardenas who was previously removed from the United States on those two dates.

7. There is no indication in the official files of the United States Bureau of Immigration and Customs Enforcement that the defendant has applied for, or been granted the requisite permission to re-enter the United States from either the Attorney General of the United States or the Secretary of the Department of Homeland Security. Further, in his sworn statement, Gilberto Hernandez-Cardenas admitted that he had not applied to the Attorney General or the Secretary of the Department of Homeland Security for permission to re-enter the United States after deportation.

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III. CONCLUSION

8. On the basis of the above information, I submit that there is probable cause to believe that Gilberto Hernandez-Cardenas, illegally reentered the United States following deportation, in violation of Title 8, United States Code § 1326.



Polly E. Kaiser
Deportation Officer U.S. Department of Homeland
Security
U.S. Immigration and Customs Enforcement
San Francisco, California

Subscribed and sworn to before me this 24th day of March 2008.



The Honorable Joseph C. Spero
United States Magistrate Judge
Northern District of California
San Francisco, California